

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

ORIGINAL

United States District Court		District EASTERN
Name (under which you were convicted): Christopher Silent		Docket or Case No.: 94:CR-01174
Place of Confinement: Hale Creek, 279 Maloney Road		Prisoner No.: 06070-265
UNITED STATES OF AMERICA CHRISTOPHER SILENT		Movant (include name under which you were convicted) CV 11-3444

MOTION

AMON, CH.J.

- (a) Name and location of court that entered the judgment of conviction you are challenging:
**UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 CODMAN PLAZA, BROOKLYN, NEW YORK 11201**
(b) Criminal docket or case number (if you know): **94 CR 01174**
- (a) Date of the judgment of conviction (if you know): **FEBRUARY 22, 1995**
(b) Date of sentencing: **APRIL 6th 1995**
- Length of sentence: **74 MONTHS**
- Nature of crime (all counts): **CARJACKING 2119 Title 18**

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUL 14 2011 ★

BROOKLYN OFFICE

- (a) What was your plea? (Check one)
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court:

(b) Docket or case number (if you know):

(c) Result:

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly

why you did not: I did not know that I would be subjected to Deportation and I was not advised by the court or my Attorney that by me pleading guilty I was exposing myself to deportation in the future.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: I'm being held for a judgment that was obtain in violation of my constitutional rights 6th Amendment.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At my time of pleading guilty I was not advised of my rights that by pleading guilty I could be subjected to deportation proceedings. Had known that right I would not have pleaded guilty to the charges in the indictment. By my Attorney failure to advised me of that right the judgment was obtained in violation of my constitutional rights. I was misadvised by my Attorney regarding immigration consequences.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Because I was not subjected to deportation at that time. UNTIL NOW. My Attorney gave misadvise about immigration.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Because I did not appeal my conviction at the time because I did not have an immigration issue. After review of the record of the plea and the present consequences of immigration removal process. The judgment was obtained in violation of my 6th Amendment right.

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Base on court records and transcript that right was not known to me that by pleading guilty I could be subjected to Automatic deportation. Trial counsel was not concern about that issue.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I was not aware at that time of the misadvised of my attorney. I was told to focus on the matter at hand. Immigration is the least of your worry.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

I was not aware that I was misadvised by my Attorney about immigration consequences of a non citizen convicted of a crime after entering the U.S. lawfully.

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At the time of my plea, my attorney did not advised me properly about immigration consequences of a non citizen being convicted of a crime. My Attorney stated that "immigration is the least of your worries."

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I did not appeal my conviction at the time because I thought by my counsel stating that immigration is the least of my worries I thought I had nothing to worry about other than the 74 months term.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

I did not appeal because I was not aware of the misadvised of my attorney of immigration consequences. Because I was told immigration should be the least of my worries I thought all I had to worry about was the 74 months prison term. So I did not appeal.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At the time of my plea, my attorney stated that immigration was the least of my worries so based on that stated statement I took the plea. Had I known that I would be subjected to automatic removal, I would have gone to trial.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I did not file direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

I did not filed appeal or post conviction motion. Because at the time I thought I was getting a good plea bargain. So I did not appeal.

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: I have not present any ground to any

courts. was not aware of Attorney misadvised at the time. If I had known at the time that there would be future automatic removal base on my crime by immigration. I would claim ineffectiveness of counsel for misadvised on immigration statutes.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Because I was not subjected to immigration removal at the time and I was not aware that my Attorney misadvised regarding immigration would become an issue with immigration 17 years later. According to *Padilla v. Kentucky* I would hope that I could receive relief from the courts if immigration is using this conviction 17 years later.

I did not know that trial counsel misadvised was a violation of my Constitutional Right under the 6th Amendment. I was satisfied with the 74 months plea bargain. However, if I had known that it was trial counsel duty to advise me of immigration consequences I would have rejected the plea bargain or filed an appeal before the one year deadline had past.

Christopher S.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively

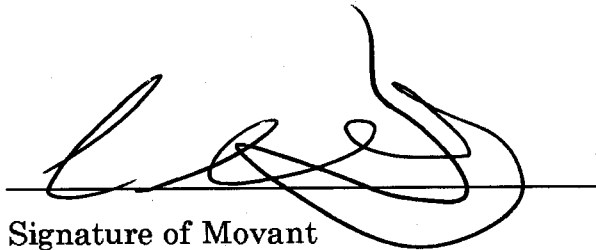
Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on 6/30/11 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion.

Sworn to me this
30th day of June 2011
Michelle Maye

MICHELE MAYE
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN FULTON COUNTY
REGISTRATION # 01MA6039876
COMMISSION EXPIRES 04/10/20 14